

Tilburg University

Complex cases

Cremers, Jan

Publication date:
2019

Document Version
Publisher's PDF, also known as Version of record

[Link to publication in Tilburg University Research Portal](#)

Citation for published version (APA):
Cremers, J. (2019). *Complex cases: Summary*.

General rights

Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

- Users may download and print one copy of any publication from the public portal for the purpose of private study or research.
- You may not further distribute the material or use it for any profit-making activity or commercial gain
- You may freely distribute the URL identifying the publication in the public portal

Take down policy

If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.



With support from
The Commission's Employment
Social affairs and inclusion DG

« Complex cases » summary

After the kick-off meeting, a survey was mailed to all the (potential) participants of the Riga Focus group *Complex cases*. In total, we received 12 contributions from 10 countries. This overview summarises the received answers.

1. Have you identified complex constructs/artificial legal entities in your work (related to compliance and enforcement)?

	Dimensions						
	More than 2 countries	Multi-level chain of involved firms	Frequent use of bankruptcy / transfer of undertaking	Several (intertwined) social policy areas	3 rd country workers involved	Falsified documents	Fake posting
Belgium	x	x	x	x			x
Bulgaria	x		x	x	x	x	x
France	x	x	x	x	x	x	x
Germany Berlin	x			x	x		x
Germany Hamburg				x			x
Germany Hamburg 2				x			x
Italy	x			x			x
Latvia	x	x			x		
Netherlands		x		x			x
Norway		x	x				
Poland	x	x		x	x		x
Portugal	x	x		x	x		

2. How do you deal with these constructs (standard procedures/methodology/specialized teams)?

The tackling of complicated/complex arrangements takes place through different methods:

- Most often, the investigation starts with an analysis of all available and accessible data. Some countries include at this stage already research that leads to a further identification of the undertakings involved (history, registration, legal and social track record).
- Standardised, ordinary inspections supplemented with information that results from exchanges with other competent authorities.
- Regional specialised teams. For instance, in France regional teams cooperate with the police, the social security administration and the tax authorities.
- Ad hoc joint inspections with other national competent authorities, joint campaigns (for a certain period or with a focus on a special sector).
- Permanent structures with other national competent authorities. For instance, Norway has installed 7 joint centres, composed of representatives of the labour inspectorate, the tax authorities, the social security administration and the police. Their work is based on a protocol/agreement on how to cooperate. In Belgium,



With support from
The Commission's Employment
Social affairs and inclusion DG

a specialised team was established at national level, inside the National Office for Social Security that cooperates with the Inspectorate in complex cases. In Portugal a permanent working group of the inspectorate monitors posting issues and assist the directly involved inspection services.

- f. Administrative cross-border cooperation through IMI.
- g. Joint inspections and assistance based on bilateral/multilateral cooperation and exchange agreements. For instance, the three Baltic States have concluded [an agreement on trilateral cooperation](#) that provides possibilities for meetings/visits of specialists in different policy fields and promotes exchange of information and cooperation among these specialists. Also joint inspections are included. Poland has concluded 13 agreements with authorities responsible for supervision of working conditions in other European countries.

3. Which instruments do you use?

There is a broad range of instruments that is used:

- a. In specific cases, the Inspectorate, involved NGOs and social partners work with specialised lawyers, researchers or other professional support (and with the regional courts or other legal and administrative bodies). Also interpreters are consulted.
- b. Direct forms of information exchange and investigations, next to the IMI-system; phone, conference calls, e-mail. Some offices also use the Internet (in general and/or Google Maps) as information source.
- c. Assessment of notification and other declarations, posting registers, social security registration, data processing, through standardised procedures or with the use of IT-systems. The Belgium LIMOSA-system is well-known in this respect.
- d. More in-depth investigations with workplace checks and inspections, interviews of workers, witnesses, clients and suspects, analyses of documents and different forms and contracts. The aim is to collect evidence and the building up of a case file, with standardised audit reports based on check lists that can be used in different languages.
- e. Follow-up of cases through cooperation with other national/foreign competent authorities and/or liaison offices.
- f. Investigations of national company registers (and/or Chamber of Commerce) and an overall assessment of all the elements necessary to check the genuine character of the service provider.
- g. Some authorities have started with risk-assessment and other preventive policy measures. Moreover, prominent cases (or detected 'models') are sometimes used for training purposes and to make inspectors aware of relevant indications and signals.
- h. In many cases the inspectorate may impose an administrative fine or penalty. Sometimes, they have the competence to (temporary) close down a workplace.



With support from
The Commission's Employment
Social affairs and inclusion DG

4. Which instruments are effective (and why)?

The assessment of the effectiveness of the available instruments shows a broad variety of opinions. Most respondents agree that joint inspections and analyses can be seen as prerequisites to success. Others mention the possibility of a direct elimination of fraudulent practices or termination of the provided services is an important and effective tool, as is the dissuasive penalisation. Also the joint and several responsibility, for instance as regards remuneration for work or compensation for overtime, can play a protective role. The cooperation with other national authorities that have stronger competences is also seen as an effective method, for instance in the Latvian case, the cooperation with the State Border Guard. An important tool is also the revision of the position of a posted worker into a workers that falls under the free movement of workers. In some countries, for instance Belgium and Italy, the inspections dealt with cases that led to a situation where workers could be seen as employees of the final user undertaking, and therefore fully subject to the national regulatory frame.

5. Which obstacles are you confronted with?

The obstacles that competent authorities and enforcement bodies are confronted with stem to a great extent from the transnational character of the transactions.

- To check the identity and the regularity of foreign firms is extremely complicated and the investigation is hampered by territorial limitations.
- Moreover, the knowledge of the host and home country regulatory frame in the area of cross-border mobility is sometimes lacking. Thus it is not always obvious to find the right counterpart or contact person.
- The work can be very time-consuming and the use of interpreters and the translation of documents is costly.
- A difficulty is also that the competences of colleagues in other countries not always match with the requests and to build up a more integrated cooperation over different disciplines takes time.
- And in certain cases, the processing takes too long or there is no response at all.
- It is signalled that a lack of understanding regarding their own position of the workers involved can be a serious handicap in the procedure.
- The answers through IMI can be rather superficial.
- Not all bodies have entrance to the data bases of the different disciplines (for instance, the registration of A1-forms).
- The deployment of virtual offices, a frequent change of ownership, often combined with the impossibility to find a legal representative at the address of registration, hinder the organisation of inspections as written demands return undelivered.

6. Positive/negative experiences?

Most of the negative experiences can be derived from the obstacles mentioned beyond. Too long procedures, superficial results from IMI-requests, a lack of accuracy and incomplete answers frustrate the investigation. Negative is also that, even in situations where a case is successfully handled and terminated, the same fraudulent actors can start all over again (in another constituency). In general, sanctioning is not dissuasive. This can lead to the powerless feeling that there is impunity before the law. Sometimes, there is also a lack of feedback or reporting on the policy pursued and the action taken after joint activities or mutual interaction.



With support from
The Commission's Employment
Social affairs and inclusion DG

Positive is the fact that once colleagues get to know each other (both national and international) and better understand the competences and limits, the cooperation can be very efficient and effective. Bilateral and multilateral agreements facilitate the work and result in more added value in investigations. The fact that through joint action, the mutual trust and operational cooperation have improved is seen as a very positive experience. Another positive experience is that awareness has grown and confidence has increased over the years. More collaboration brings more synergy.

7. Which other national/European/International actors do you cooperate with? Positive impact?

The national cooperation has extended over the years, and the respondents indicate that there is more and more cooperation across the whole area of social policy (working conditions, pay, pay and labour related taxes and social contributions). In several countries this goes hand in hand with cooperative contacts with the social partners. In some countries, the national cooperation has extended to the policy, the immigration office and regional or local authorities. In some countries contacts are established with embassies or consulates.

Most bodies have established cooperation agreements or joint projects with the (foreign) colleagues that do matter in the mobility and the in- and outflow in their country. First of all, this takes place between regional borders at pan-European level or direct neighbouring countries (the Nordic region, the Baltic States, the Mediterranean region), secondly between countries that traditionally have an open economy, thirdly between countries that have, after the EU-enlargement, been confronted with strong migration and mobility tendencies. Some (not all) refer to administrative cooperation with other liaison offices and the use of IMI, others recall the participation in various events and projects. In addition, the successful cooperation with the most concerned social partner organisations is mentioned.

8. What were the consequences of your actions for workers/companies/user undertakings (clients)?

The respondents are relatively modest about the consequences of their actions. Their work contributes to a higher awareness of both workers and companies about their rights and obligations as well as the sources of information that interested parties can use if necessary. It can lead to a better protection of the workers and the tackling of abusive practices, notably in cross-border matters. It is also noted that, in some cases, the involved workers were no longer recruited through abusive intermediaries, but directly engaged. Sometimes, the user undertaking is forced to engage the worker, after an overall assessment of the factual elements of the employment relation. In such a situation, the free movement of workers principle of equal treatment in the country where work is performed applies totally. Sometimes, the direct result is the settlement of pay or entitled compensation. Overall, the action contributes to the settlement of a regular and legal status of the involved workers.

The actions can lead to a 'disciplining' of employers and user undertakings, but also to further clarification about the consequences of working abroad. An effect can be that enterprises are better prepared to hire European workers in a genuine way and that user undertakings are becoming more aware of the risks of using intermediaries. Involvement of the social partners (trade unions and employers at national and European level) increases the trust in the institutions responsible for monitoring compliance. It is also indicated that firm penalties and strict action, for instance leading to the withdrawal of undertakings breaking the law, act as a clear signal that distortion of competition through fake provision of services is not tolerated and genuine posting is promoted.